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14 DAIICHI SANKYO, INC. AND  
15 DAIICHI SANKYO US HOLDINGS, INC.

16 UNITED STATES DISTRICT COURT  
17 SOUTHERN DISTRICT OF CALIFORNIA

18 SUSANNE AMBLER and RICHARD  
19 AMBLER,

20 Plaintiffs,

21 vs.

22 DAIICHI, SANKYO, INC., dba Sankyo  
23 USA Development, Sankyo Pharma  
24 Development, Sankyo Pharma Inc., Daiichi  
25 Sankyo Pharma Development, Daiichi  
26 Pharmaceuticals, Inc., Daiichi Medical  
27 Research, Inc., and Daiichi Pharma  
28 Holdings, Inc; DAIICHI SANKYO US  
HOLDINGS, INC., parent company of  
Daiichi Sankyo, Inc.; DAIICHI SANKYO  
CO., LTD., parent corporation of Daiichi  
Sankyo US Holdings, Inc. and/or Daiichi  
Sankyo, Inc., fka Sankyo Company, Ltd.,  
Daiichi Pharmaceutical Company, Ltd.;  
and DOES 1 through 600, inclusive,

Defendants.

Case No. **'14CV1475 WQHBLM**

**NOTICE OF REMOVAL AND REMOVAL  
OF ACTION TO FEDERAL COURT  
UNDER 28 U.S.C. § 1441(b) (DIVERSITY)**

**DEMAND FOR JURY TRIAL**

**TO THE CLERK OF THE FEDERAL DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that without submitting to the jurisdiction of this Court and without waiving any available defenses, defendants Daiichi Sankyo, Inc. and Daiichi Sankyo US Holdings, Inc. (collectively referred to as “Removing Defendants”),<sup>1</sup> by and through their undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this notice of removal of this action from the Superior Court of the State of California, County of San Diego, where the action is currently pending, to the United States District Court for the Southern District of California. As addressed below, diversity jurisdiction exists because there is complete diversity among the parties pursuant to 28 U.S.C. § 1332(a) and the amount in controversy exceeds \$75,000, exclusive of costs and interest. In support of this notice of removal, Removing Defendants state as follows:

1. On April 24, 2014, plaintiffs Susanne Ambler and Richard Ambler (“Plaintiffs”) filed a complaint in the Superior Court of the State of California, County of San Diego, entitled *Susanne Ambler, et al. v. Daiichi Sankyo, Inc., et al.*, Case No. 37-2014-00012743-CU-PL-CTL (the “Complaint”). A true and correct copy of the Complaint is attached hereto as Exhibit 1.

2. In this products liability action, Plaintiffs seek damages for alleged injuries that Susanne Ambler claims resulted from her alleged ingestion of Benicar HCT®, a prescription medication. *See generally* Compl. ¶¶ 14-17. Removing Defendants deny Plaintiffs’ allegations.

3. No further proceedings have been had in the state court action in relation to Plaintiffs’ Complaint.

4. This case is properly removed to this Court under 28 U.S.C. §§ 1332 and 1441 because it is a civil action in which the amount in controversy exceeds \$75,000, exclusive of costs and interest, and there is complete diversity amongst the parties. As shown below, the procedural requirements for removal are satisfied and this Court has original jurisdiction.

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<sup>1</sup> Defendant Daiichi Sankyo US Holdings, Inc. has not been served in this action. This defendant appears specially herein with full reservation of all rights and defenses, including its defenses of failure of service, insufficiency of process, and insufficiency of service of process.

**I. DEFENDANT HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL.**

5. Defendant Daiichi Sankyo, Inc. was served on May 29, 2014. Accordingly, this notice of removal is timely filed pursuant to 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (30-day time period for removal runs from the date of formal service).

6. Venue in the United States District Court for the Southern District of California is proper because this matter was filed in the Superior Court of the State of California, County of San Diego, which lies within this district. *See* 28 U.S.C. §§ 84(d), 1441(a).

7. Copies of all process, pleadings, orders, and other papers received by Removing Defendants are attached hereto as Exhibit 1. *See* 28 U.S.C. § 1446(a).

8. A copy of this notice of removal will be filed with the Clerk of the Superior Court of the State of California, County of San Diego. *See* 28 U.S.C. § 1446(d).

9. No previous application has been made for the relief requested in this removal.

**II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.**

10. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) because this is a civil action between citizens of different states in which the amount in controversy exceeds \$75,000, exclusive of costs and interest.

**A. The Amount In Controversy Requirement Is Satisfied.**

11. For purposes of removal, a removing defendant need only show that the amount in controversy “more likely than not” exceeds the jurisdictional minimum of \$75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). When the amount in controversy is not clearly specified in the complaint, the court may consider facts in the complaint as well as in the removal petition. *See Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1031 (N.D. Cal. 2002); *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); *accord Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1063 (11th Cir. 2010) (stating that the Court “found no case in any other circuit that purports to prohibit a district court from employing its judicial

1 experience or common sense in discerning whether the allegations in a complaint facially  
2 establish the jurisdictionally required amount in controversy.”).

3 12. It is apparent in the Complaint that Plaintiffs seek an amount in controversy in  
4 excess of \$75,000, exclusive of costs and interest. In their Complaint, Plaintiffs allege that as a  
5 result of Susanne Ambler’s ingestion of Benicar HCT®, Susanne Ambler suffered bodily injuries,  
6 including but not limited to “sprue-like enteropathy and/or lymphocytic colitis, microscopic  
7 colitis, or collagenous colitis, manifested by chronic diarrhea, severe weight loss, nausea,  
8 vomiting, malnutrition, and dehydration.” Compl. ¶ 16; *see also id.* at ¶ 17 (providing that as a  
9 result of her condition, Susanne Ambler was admitted to the hospital for extended periods of time  
10 and subsequently underwent difficult, sustained, and costly treatment.) Plaintiffs further allege  
11 that as a result of Susanne Ambler’s ingestion of Benicar HCT®, Susanne Ambler has “suffered  
12 and will continue to suffer special and general damages, including but not limited to medical and  
13 incidental healthcare expenses, loss of earnings, consequential economic losses, and pain,  
14 suffering, and loss of enjoyment of life.” *Id.* at ¶¶ 30, 35, 39, and 52. Richard Ambler, the  
15 alleged husband of Susanne Ambler, claims that he “has suffered and will continue to suffer for  
16 an indefinite time in the future, loss of services, security, companionship, and consortium of his  
17 wife, Susanne Ambler.” *Id.* at ¶ 54.

18 13. Plaintiffs expressly demand damages “in excess of the unlimited jurisdiction of  
19 this court.” *Id.* at ¶¶ 30, 35, 39, and 52. In addition, Plaintiffs seek compensatory general and  
20 special damages as well as punitive damages. *Id.* at Wherefore Clause on p. 13.

21 14. Although Removing Defendants deny any liability to Plaintiffs, their allegations  
22 of serious injury on their face, in addition to their express demand for compensatory and punitive  
23 damages, plainly place more than \$75,000 in controversy. Therefore, analyzing the Complaint in  
24 a light most favorable to Plaintiffs, while not admitting liability for any amount, the amount of  
25 damages alleged to be in controversy for Plaintiffs exceeds \$75,000, exclusive of interest and  
26 costs. *See Campbell v. Bridgestone/Firestone, Inc.*, 2006 WL 707291, at \*2 (E.D. Cal. Mar. 17,  
27 2006) (apparent from complaint that amount in controversy met where plaintiffs asserted strict  
28 products liability, negligence, and breach of warranty claims against multiple defendants and

complaint sought compensatory damages for wage loss, hospital and medical expenses, general damages, and loss of earning capacity); *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1107–08 (9th Cir. 2010) (“even though the state court complaint does not specify an amount” it satisfied amount in controversy requirement by requesting damages for, among other things, wrongful death, loss of consortium, negligence and funeral, medical and burial expenses); *In re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 296 (S.D.N.Y. 2001) (holding that a “complaint obviously asserts a claim exceeding \$75,000” where plaintiffs alleged serious medical complications from ingestion of a prescription drug); *Bailey v. J.B. Hunt Transp., Inc.*, No. 06-240, 2007 WL 764286, at \*6 (E.D. Pa. Mar. 8, 2007) (finding amount in controversy requirement satisfied where complaint alleged a “litany of serious, permanent injuries,” “surgeries and treatments” and “the alleged permanent impairment of [the] ability to enjoy life’s activities”); *Butzberger v. Novartis Pharm. Corp.*, No. 06-80700-CIV-RYSKAMP/VITUNAC, 2006 U.S. Dist. LEXIS 85576, at \*8 (S.D. Fla. Nov. 27, 2006) (“federal jurisdiction exists where plaintiffs allege personal injuries caused by prescription medications, even where, as here, they do not expressly provide an[] amount in controversy”); *McCoy v. Gen. Motors Corp.*, 226 F. Supp. 2d 939, 941 (N.D. Ill. 2002) (“courts have routinely held that when plaintiffs allege serious, permanent injuries and significant medical expenses, it is obvious from the face of the complaint that the plaintiffs’ damages exceeded the jurisdictional amount”); *Quinn v. Kimble*, 228 F. Supp. 2d 1036, 1037–38 (E.D. Mo. 2002) (despite plaintiffs’ assertion that their total damages did not exceed \$75,000, the court held that it was “facially apparent” that the amount in controversy was met where plaintiffs alleged that they “suffered head, neck, and back injuries; incurred medical expenses and will incur further such expenses; [and] have permanent, progressive, and disabling injuries”); *Knight v. Kellog Brown & Root, Inc.*, No. 06-11164, 2007 WL 2265206, \*3 (E.D. La. Aug. 6, 2007) (“given [plaintiff’s] assertion regarding her injuries, including the necessity of two surgeries, implantation of hardware and screws, physical therapy, mental anguish, and a resulting permanent disability, the Court find[s] that it is ‘facially apparent’ from the petition that the amount in controversy likely exceeds the jurisdictional amount”).

**B. There Is Complete Diversity Between the Parties.**

15. There is (and was at the time the complaint was filed) complete diversity between Plaintiffs and Defendants. *See* 28 U.S.C. § 1332(a).

16. The Complaint alleges that Plaintiffs are residents of California. Compl. ¶ 1. Accordingly, Plaintiffs are citizens of the State of California for purposes of determining diversity of citizenship.

17. Defendant Daiichi Sankyo, Inc. is now (and was at the time the Complaint was filed) a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New Jersey. Accordingly, for purposes of diversity jurisdiction, it is a citizen of Delaware and New Jersey. *See* 28 U.S.C. § 1332(c)(1) (“a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has a principal place of business”).

18. Daiichi Sankyo US Holdings, Inc. is now (and was at the time the Complaint was filed) a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New Jersey. Accordingly, for purposes of diversity jurisdiction, it is a citizen of Delaware and New Jersey. *Id.* Daiichi Sankyo U.S. Holdings, Inc. has not been served with this lawsuit as of this date.

19. Daiichi Sankyo Company, Limited (incorrectly named as Daiichi Sankyo Co., Ltd.) is now (and was at the time the Complaint was filed) a corporation organized and existing under the laws of Japan with its principal place of business in Japan. Accordingly, for purposes for diversity jurisdiction, it is a citizen of Japan. *Id.* Daiichi Sankyo Company, Limited has not been served with this lawsuit as of this date.

20. Although Plaintiffs purport to state claims against certain unnamed, fictitious “Doe” defendants, their citizenship is disregarded for purposes of removal. *See* 28 U.S.C. § 1441(a) (“[f]or purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded”).

21. Because Daiichi Sankyo Company, Limited and the “Doe” defendants in this action have not been served, their consent to joinder in this removal is not required. *See, e.g.,*

1 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988).

2 22. Accordingly, this action involves “citizens of different states.” *See* 28 U.S.C. §  
3 1332(a)(1)-(2). Because Plaintiffs are California citizens and no defendant is a citizen of the  
4 State of California, removal of this action is proper under 28 U.S.C. §1441(b).

5 23. WHEREFORE, Removing Defendants remove this action from the Superior Court  
6 of the State of California, County of San Diego, under Case No. 37-2014-00012743-CU-PL-CTL,  
7 to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. If any question arises as to the  
8 propriety of the removal of this action, Removing Defendants respectfully request the opportunity  
9 to present a brief and oral argument in support of its position that this case is removable.

10 **DEMAND FOR JURY TRIAL**

11 Removing Defendants hereby demand trial by jury in this action.

12  
13 Dated: June17, 2014

DRINKER BIDDLE & REATH LLP

14  
15 By: /s/ Siobhan A. Cullen  
16 Siobhan A. Cullen

17 Attorneys for Defendants  
18 DAIICHI SANKYO, INC. AND DAIICHI  
SANKYO US HOLDINGS, INC.

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